



The experiences of young witnesses and caregivers in Aotearoa New Zealand's Sexual Violence Pilot Courts

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New Zealand's Sexual Violence Courts Pilot was established in late 2016, intended in part, to reduce the stress experienced by complainants. Young witnesses who testified in the specialist courts and their caregivers were interviewed about their experiences of court involvement. Interview transcripts were analysed using thematic analysis and the following themes were identified: The period between reporting an alleged offence and the trial is far too long and stressful; moving forward with life is difficult until the trial has concluded; cross-examination is distressing; feeling comfortable and supported when at court is important; safety and distance from the defendant when at court is important; separation of young witnesses from their caregivers at court is difficult; information is lacking throughout the process; and parenting young witnesses through the court process is challenging. Young witnesses typically experienced court involvement as very stressful and distressing, and further innovation within the courts is therefore needed.

Key words: child sexual abuse; child witnesses; complainants; criminal trials; cross-examination; New Zealand; sexual violence pilot courts.

The sexual abuse of young people is a pervasive problem in Aotearoa New Zealand. In a large community sample of women, 23.5% of those in Auckland and 28.3% of those in Waikato reported being sexually abused during their childhood (Fanslow et al., 2007). In a national survey of secondary-school-aged children, 20% of female students and 9% of male students reported having been touched in a sexual way or having been made to do sexual things that they did not want (Clark et al., 2012). However, sexual offending goes mostly unreported, with less than 10% of all sexual-violence-related offences estimated to be reported to the police (Ministry of Justice, 2015). Among those that are reported,

however, approximately half involve an offence against a child (Ministry of Justice, 2019). For this reason, since the 1980s children have appeared in significant numbers as complainants in the criminal courts, most commonly due to allegations of sexual abuse (Hanna et al., 2010).

At the present time in Aotearoa New Zealand, when a young person reports that they have been the victim of a sexual offence, they are typically interviewed by a specialist forensic interviewer, usually a police officer or a social worker from child protection services. The recorded interview is used as evidence-in-chief in court and is viewed by the complainant prior to testifying to refresh their memory.

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Audio-visual link (AVL) has become the default mode of testifying for young witnesses, allowing a witness to give evidence in real time, but from a separate location (usually a room within the court building; *Evidence Act 2006*, s 105). During the witnesses' evidence-in-chief, cross-examination and re-examination, the Judge, irrespective of a witness's age, 'may disallow, or direct that a witness is not obliged to answer, any question that the Judge considers improper, unfair, misleading, needlessly repetitive, or expressed in language that is too complicated for the witness to understand' (*Evidence Act 2006*, s 85). In some cases, communication assistants (that is, intermediaries) are engaged to support communication during testimony. Judges must close the courts to the public during children's testimony if the charges are of a sexual nature (*Criminal Procedure Act 2011*, s 199). A child witness is able to have a support person with them when testifying, and court victim advisors provide support and education for court in the days leading up to the court appearance.

Over the last 30 years an increased awareness of challenges surrounding children's court involvement has led to reforms to Aotearoa New Zealand's criminal justice system, which are reflected in current processes for young witnesses. However, despite such reforms, questions have been repeatedly raised as to how a justice system that was essentially designed for adults can adequately accommodate children, protect their wellbeing and facilitate best evidence (McGregor, 2017; New Zealand Law Commission, 2015; Randell et al., 2018). The concerns most frequently highlighted are the timeliness of trials, the stress that young witnesses experience, and the appropriateness of courtroom questioning for children's comprehension and, therefore, effective participation.

Participation in the courts is often experienced by young people as stressful and distressing (Eastwood & Patton, 2002; Hayes et al., 2011; Plotnikoff & Woolfson, 2004, 2009; Randell et al., 2018). While

sexual abuse itself has large potential for harmful effects, participation in the court process may lead to additional psychosocial harm for children in both the short and long term (Goodman et al., 1992; Quas & Goodman, 2012; Quas et al., 2005). This is not, however, inevitable. Not testifying can also have negative outcomes for some young people, and in certain situations testifying may be experienced as empowering, even following initial short-term distress (Quas et al., 2005).

The questioning of young witnesses, particularly during cross-examination, frequently exceeds children's communicative and cognitive capabilities and contradicts the type of questioning known to support best evidence (Davies & Seymour, 1998; Hanna et al., 2012; Randell et al., 2020; Zajac & Cannan, 2009; Zajac et al., 2003). Furthermore, stress associated with the experience of giving evidence in a courtroom context has an impact on children's performance when giving evidence (Nathanson & Saywitz, 2003; Quas & Lench, 2007), which in turn may have an impact on the trial outcome.

There is limited research in Aotearoa New Zealand that captures the experiences of complainants of sexual violence from their own perspectives. However, some recent qualitative research efforts suggest that the court process is typically experienced by young complainants of sexual violence as distressing and confusing, and this mirrors the findings of similar qualitative research in overseas jurisdictions (Back et al., 2011; Eastwood & Patton, 2002; Hayes et al., 2011; Plotnikoff & Woolfson, 2009). In a recent study, young complainants and the caregivers of young complainants who had participated as witnesses in sexual violence trials in Aotearoa New Zealand were interviewed (Randell et al., 2018). Aspects of court involvement that interviewees reported as particularly distressing included the delay period to trial, uncertainty about court processes, fear of seeing the defendant and cross-examination. A need for better information provision and trial

preparation was highlighted. The outcome of the trial, including the sentence, was of importance, and in the case of acquittals or short sentences, witnesses reported disappointment and/or fears about future safety. Convictions were described as being important in validating the young person, counteracting any community disbelief, providing safety for the family (where there was a sentence of imprisonment) and providing a sense of 'closure' and justice. Caregivers of young witnesses spoke about the significant emotional strain that they experienced, and a desire for greater support for both themselves and their children prior to and during the trial.

A recent report commissioned by the Ministry of Justice focused on the experiences of victims of sexual violence with a view to improving the justice response for such victims. This research included interviews or questionnaires with 39 victims of sexual violence who had made a police complaint, 21 of whom had participated in a court trial between 2015 and 2018 (Gravitas Research & Strategy, 2018). Most of these participants were adults; however, four were younger than 16 years old, and nine were aged between 16 and 24 years old. Participants identified that long timeframes and delays to proceedings were distressing and that more preparation and information were needed to alleviate anxiety. Support by a specifically dedicated liaison person throughout the process from the time of the initial complaint was recommended by the researchers. Bail conditions were found to be insufficient to allow victims to feel safe in the lead up to the trial. Cross-examination was the most distressing aspect of the justice process. Sentences were frequently disappointing, and victims were under-resourced to cope after the trial process had concluded. The report concluded that victims' needs were not always considered by the justice system, that their rights were not always upheld, and that involvement in the justice process can cause re-victimisation and re-traumatisation.

In response to concerns for complainants of sexual violence, in 2016 the then Chief District Court Judge established the Sexual Violence Court Pilot in Auckland and Whangārei District Courts. This pilot established best practice guidelines for Category 3 sexual violence trials with the objectives being to reduce pre-trial delays and secondary trauma for both child and adult complainants of sexual violence (Chief District Court Judge Doogue, 2016). Best practice guidelines were set for case management, case review hearings and trial call overs, and the trial itself (The District Court of New Zealand, 2016). Cases in the pilot courts are presided over only by designated judges. The Sexual Violence Court Pilot best practice guidelines also stipulate that 'The judge is to ensure flexibility for the evidence of the complainant recognising the complainant's age and capacity including regular breaks, early/late start and finish times'. Additionally, 'The judge must be alert to and intervene if questioning of any witness, particularly complainants, is unacceptable in terms of s 85 *Evidence Act* 2006'. The pilot judges attended a three-day training course, which aimed to sensitise them to issues for vulnerable witnesses, including comprehension difficulties arising from complex language and the use of closed and leading questions, which have been found to be prevalent in Aotearoa New Zealand courts.

An initial evaluation of the pilot was conducted in which various stakeholders were interviewed, including nine complainants. The age of these complainants was not stated, and the report was non-specific to children. The report concluded that procedural changes introduced in the pilot courts were for the most part working well (Gravitas Research & Strategy, 2019). There were, however, some ongoing concerns expressed by some complainants about the length of time between their complaint and the trial, inadequate physical facilities to provide protection from encountering defendants, and cross-examination. The report concluded that complainants were

generally better prepared for what to expect during the trial as a result of the pilot, and that 'the trials were managed in a way that did not cause them to be retraumatised by the process' (Gravitas Research & Strategy, 2019, p. 72). These preliminary findings should be interpreted with caution given the small number of complainants included in the study and the likely variation in the experiences of complainants according to many factors such as age, the relationship with defendant, the nature of the charge(s) and the outcome of trial.

The present research was initiated in response to the paucity of qualitative research regarding child witnesses in Aotearoa New Zealand generally and the absence of a review of the pilot courts in relation to child witnesses. During the period that this research was taking place, it was announced that the two sexual violence pilot courts would be made permanent. The research was designed with the intention of supporting innovation in court processes and the further development of the specialist sexual violence courts as they relate to young people. Interviews were conducted with young witnesses who had testified in trials and caregivers of young witnesses, with the aim of identifying sources of stress during their court involvement and aspects of the experience that they found supportive.

The study is predicated on the belief that speaking with young witnesses about their experiences of the justice system is essential to reform. An absence of consultation with young people is arguably a violation of their rights to consultation (United Nations Convention on the Rights of the Child, 1989) and risks adults in positions of decision-making power making incorrect assumptions about young witnesses' needs. There is an ethical responsibility for those who influence court processes to seek and consider the voices of young witnesses and those close to them in their decision-making.

Method

Approval for the study to proceed was provided by the then Chief District Court Judge

Jan-Marie Doogue and the Ministry of Justice. Ethics approval was granted by the University of Auckland Human Participants Ethics Committee. The protection of the welfare of participants is a primary consideration in research such as this. Their rights to be consulted and heard about matters that affect them must be balanced by their rights to be protected from any possible trauma and harm (Mudaly & Goddard, 2009). Accordingly, our procedure for participant recruitment and conduct of interviews prioritised the wellbeing of participants.

Participation was offered to young witnesses (under 18 years of age at the time of the trial) who had given evidence in one of the two (Auckland or Whangārei) sexual violence pilot courts in 2019 and their supportive caregivers. Caregivers were parents, legal guardians and other family members who had acted as support people through the court process. The final sample included eight young witnesses and nine caregivers. The age of the young people at the time of the interviews ranged from 9 to 17 years old.

Potential participants were initially approached by the courts' victim advisors, with whom they were familiar. If they were interested in taking part, and consented to being contacted, then contact was made by a member of the research team who provided further explanation of the research and asked again whether they would like to participate. Māori and Pasifika participants were offered an interviewer of their own ethnicity. Participants were offered the option of having a support person of their choice present for the interview. Interviews did not take place until at least six weeks following a not guilty verdict, or in the case of a guilty verdict, six weeks after sentencing, so as to allow for the normal appeal period to have passed.

Prior to the interview, information about the research and about the consent form they would be asked to sign was reviewed with them to check for understanding and provide an opportunity for any further questions to be

answered. Guardians' consent was required for children along with the consent given by the child themselves. A further opportunity to withdraw from participation was provided at this point. Participants were also advised that they could withdraw from participation at any time during the interview.

A semi-structured interview schedule invited comments related to each stage of the court process (pre-trial, the trial itself and post-trial). Participants were encouraged to identify aspects of their experience that were of importance to them, and accordingly the interview structure and topics discussed varied between interviews. Questions invited participants to identify stressful aspects of court involvement, factors that increased and decreased any stress experienced, and the availability and impact of supports. Participants were also asked about changes that they would like to see that would improve the court experience for young witnesses and their families. Interviews with caregivers covered their perspective on the young witness's experience and their own experience as a caregiver supporting a young person through the court process.

All interviews were conducted by a clinical psychologist. Potential distress was monitored and managed throughout and immediately following the interview. Referrals to appropriate support services could be made if mental health difficulties or other significant needs were identified during the interview. Follow-up contact was made with participants (or, where more appropriate, with caregivers) to enquire as to their wellbeing post-interview and to provide any further debriefing or referral to other supports as needed (no referrals were required).

Careful consideration was taken to protect the privacy of participants in managing data and reporting findings. Data analysis was guided by methods of thematic analysis as described by Braun and Clarke (2006, 2013). Transcripts were read and re-read by the first author in a process of familiarisation. Individual pieces of interview transcript data

relevant to the focus of the research were then coded by the first author using qualitative data analysis software. The codes were then collated into broader themes, each of which 'captures something important about the data in relation to the research question, and represents some level of patterned response or meaning within the data set' (Braun & Clarke, 2006, p. 82). An inductive approach was adopted whereby themes were data-driven, with no prescribed limits or areas of focus. However, given the purpose of the research, care was taken to cover participant accounts of stressful and supportive aspects of the court process in interviews, which was therefore reflected in the data. Codes and themes were reviewed and refined by the first and second authors until consensus was reached.

Results

Waiting for the trial is very stressful

The period between reporting an alleged offence and the resulting trial was described by young witnesses and caregivers alike as a time of immense stress, and an aspect of court involvement that had a broad and particularly negative impact. Young people and their family members experienced significant stress due to the psychological and social impact of sexual victimisation, disclosure and reporting to the police. However, the period awaiting trial was described as adding stress over and above that associated with the offending. The pre-trial period compounded sexual-violence-related stressors such as family conflict and distress, community-related distress, trauma responses and mental health challenges for the complainant and/or caregiver, and parenting stress.

I think [the court process] adds so much more uncertainty to an already very aggravated, raw, sad, angry, situation. You're now trying to process and comprehend what is going to happen with court. Court is a whole other ball game. So not only are you just dealing with the fact that this has happened and you're

trying to pull your family back together,
you now have to go through court.
– Caregiver

Impact on relationships and community

Some participants felt isolated or disconnected from their extended families and communities during this period due to conflict related to the alleged offence, stigma associated with sexual victimisation and judgement from others. Additionally, in several cases, the defendant remained in the same community during the period prior to the trial, which was distressing for many participants. This impacted on their ability to engage with important community spaces such as marae, places of worship and school, and to engage in wider family and community activities such as tangi/funerals. Participants also worried about the safety of other young people in their families and communities during this time.

It was incredibly hard, because also they knew all their family were there [at a tangi], and they don't get to see their family much . . . and they kept saying to me, how come we can't go, how come we can't go, he's the baddy, how come he gets to be there? Yeah, so it was really hard. – Caregiver

The big thing was that she was always scared that she was going to see [Defendant] at school. She knew that he wasn't allowed to go near there but I remember nearly every day it was 'I didn't see [Defendant] today' or 'Am I going to see [Defendant] today?' So that was a big thing that affected school. – Caregiver

Some participants refrained from talking with other family members or friends about the sexual abuse, the impending trial, and any reasons for change in family circumstances (such as relationship separations and relocation) because of the sensitivity of the topic and/or a belief that they should not discuss events for legal reasons. Whether the restraints were from advice of others or self-imposed,

the period leading to their court appearance was made difficult due to feeling unable to be open about their circumstances. This also deprived them of potential sources of support.

I was pretty nervous. I was scared most of the time. I wasn't getting on with my friends so well . . . kind of because I couldn't tell them, and they'd been asking questions about why I had been acting so weird and that made me feel frustrated. – Young person

Impact on wellbeing and the ability to move forward with life

Participants spoke about how the impending trial was always on their mind during this period. Young people, as well as caregivers, experienced significant anticipatory anxiety in the wait before the trial, which was exacerbated by uncertainty about trial processes and outcomes.

But yeah, it just meant there was like this big 18 month, or slightly longer uncertainty, which is huge. – Caregiver

I constantly used to think like what would the outcome be like? . . . when I was free I would sort of think about that because it was coming near to the date. – Young person

Until the trial was completed, participants (both young people and their caregivers) described being unable to move forward practically and emotionally with their lives. The time between reporting an offence and the conclusion of the trial was described by one participant as one of being 'in limbo'. The difficulty moving forward was attributed to anxiety about the trial and ongoing stressors associated with sexual victimisation and making a complaint, which remained until the trial had concluded. Additionally, some young witnesses, as well as some caregivers who knew that they may be called as witnesses, felt pressure to retain clear memories of the offending

and/or related events in preparation for testifying. The regular revisiting of traumatic memories was experienced as distressing and as impacting on the mental wellbeing of participants.

Like it was very difficult trying to like move, I was trying to move on instead of trying to remember that again and again and again. And it's not something I want to remember, and I don't want, like anyone who's going through this, I don't want them to remember what they've been through. And it was, I sometimes felt, I don't even know how to say it. But like you know you feel that way where you, kind of, just want to be left alone, and just want to isolate yourself. – Young person

The memories flash back . . . we had to remember every single thing, every single day you go to the same thing, which is not a good thing. – Caregiver

For several young people the distress that they experienced during this period interfered with their desire or ability to engage in their schooling.

She's, she's a scholar, she'll walk through rain, hail and shine just to get to school. She's teacher's pet, you know, and school is her life. . . . So, for her in that time to say that she didn't want to go to school, it was really scary for me because it wasn't her anymore. It's like, you've given up. – Caregiver

One young person stopped attending school during this period and did not re-engage.

I didn't want to go to school anymore because court was coming up and I didn't know how to process that at the same time as schoolwork. – Young person

Some participants described relief following the trial and sentencing being over, and a related sense of closure.

I guess just hearing he's going away to jail, yeah. That brought like, I guess

freedom. Yeah, that's all I thought about, like yes, I'm free from it, yeah. I don't have to worry about it anymore . . . he's going away, he can't hurt anyone else. You've told your part of the story. – Young person

The length of time between making a complaint and the trial is far too long

The length of time between reporting an alleged offence and the trial was described by all young people and caregivers as being far too long. When asked what was stressful about going to court, one caregiver replied, '*Just the amount of time it fuckin' took*'.

The delay is the major thing, yeah. And from what [we were told] the whole point of this new sexual assault court was supposed to speed it up for everybody. And you're kind of going seriously, 18 months is speeding it up? – Caregiver

Participants spoke about how the long wait between reporting to authorities and the trial meant that many causes of distress, such as family and community tension, the offender's presence in the community and anxiety about the impending court appearance were exacerbated. The impact of these stressors was magnified, and psychological healing and opportunity for forward momentum in life were delayed.

It should never take that long because that whole time you can't really carry on with your life, you can't really move forward because you have this big thing coming . . . you just have this oh my God, we're going to have to do this, my child is going to have to do this. You just have that on your mind. – Caregiver

Unexpected delays arising from adjournments and hung juries leading to retrials were reported to be particularly stressful and frustrating. Furthermore, long delays to trial impacted on the motivation of young people to participate in the justice process.

[I was] scared. I pulled out in one part [when awaiting retrial] then I realised that I had to do it for the sake of myself. I guess it was just like we, I think it was our second year doing it and yeah, there was nothing happening, so it was just like there's no use in doing it. Yeah, and I just didn't want to go. – Young person

Participants regarded the long period of time awaiting trial as having an inevitable impact on their memory of more peripheral details of events, which increased the stress of testifying.

[If the delay period had been much shorter] I would've remembered every, like every single detail. . . . Like I mean it was two years ago, you can't really expect me to remember what colour [clothing] they were wearing. I don't even remember what clothes I wore, like last week, yeah. – Young person

All participants identified a reduction in the time between making the complaint and the trial as a necessary change in court processes for young witnesses. It was anticipated that a reduction in this time would significantly reduce the negative impact of court involvement on the wellbeing of young witnesses and their primary support people. Several caregivers stated that an ability for children to have their involvement in the justice system end shortly after their evidential video has been recorded would be ideal.

If we could get a way that the child doesn't even need to go there in the first place to make that more stressful and more sad when you're already in this vulnerable position. If we could just avoid that completely. It would take so much pressure off the child knowing that they have done everything they have to do at the beginning. – Caregiver

Cross-examination is distressing

Participants consistently described cross-examination of young witnesses as one of the

most stressful and distressing aspects of court involvement.

I just didn't want to be here, like, I didn't want to be on earth. – Young person (when talking about being cross-examined)

But it was the grilling [referring to cross-examination] they found really, really hard. – Caregiver

Some young people described testifying as inherently uncomfortable and embarrassing given that they were speaking in front of unknown adults about details of sexual abuse.

Yeah, it was really embarrassing. . . . I just didn't wanna say it. – Young person

However, the most distressing part of testifying was the style of questioning by the defence lawyer. Young people described feeling '*annoyed*', '*fed-up*', '*scared*', '*angry*' and '*stressed*' during cross-examination. The defence lawyer was described as '*intimidating*', '*scary*', '*mean*' and '*manipulative*'.

He was like really nasty. He wasn't giving me any chances, he was just straight on 'Well [Defendant] didn't do this', '[Defendant] didn't do that'. – Young person

Comments by young witnesses about defence lawyers' language and line of questioning included that their questions were confusing, that they often asked more than one question in the same sentence or the same question repeatedly, and that they didn't allow young witnesses space to provide answers.

When she asked me the same question over and over again, and I thought that the world was going backwards and forwards, backwards and forwards. And I didn't like that, so when I went back to the judge, I said can I have a break, and then I stopped. – Young person

Some questioning was frustrating for young people, who felt that words were being

put in their mouths and that it was difficult for them to answer questions freely as a result.

The thing is he didn't only ask questions, he was telling me the answers to the questions. He would be like 'Oh, isn't it right that this happened, and this happened, and he was there, and you weren't'. Like, let us answer for ourselves, we were there, we experienced [it]. – Young person

Particularly distressing for young people was the defence lawyer undermining their credibility or making implications about their integrity or that of their friends or family members. For many young witnesses, credibility challenging questions during cross-examination were experienced as particularly distressing.

Because that's how they explain the questions, 'I don't believe you, you have to give more evidence'. And I was like, how can I remember when it was, like, ages ago? But I didn't say 'How could I remember?' – Young person

Well it was only [Defence Lawyer] that didn't believe me, and he made me cry. – Young person

She feels like he didn't believe her . . . he was asking her questions that made it seem like she was lying and stuff. And she took it to heart. – Caregiver

Some participants described the manner in which young people are questioned as having little regard for their vulnerability due to age and/or the sexual victimisation that they had experienced.

I mean they're still kids at the end of the day. I feel like, you know, people need to remember that you're still dealing with children and stuff, and she was quite traumatised about what happened to her. – Caregiver

Caregivers also spoke about cross-examination having an ongoing negative impact on

their child's wellbeing after the trial had concluded.

The way that the lawyer made her feel, 'cause she said for even weeks after, she was like, oh, and that bitch lawyer, you know, didn't believe me. . . . And, course that's going to be soul destroying for a 10, 12, you know, 11-year-old kid'. – Caregiver

Both young witnesses and caregivers spoke about how young people may be reluctant to correct a lawyer given their age and status. They described the impact credibility challenging questioning had on a child's testimony, and the self-doubt that was created when questioned in such a way. Caregivers talked about how a family expectation or value of respect for elders may contribute to a young person's reluctance to contradict a lawyer in the court context.

Actually there was something the littlest girl said that made me think, 'cause she said [Defence Lawyer] was saying 'That's not correct' or something to that effect, and she was like she didn't want to correct him because he was a man she said, like an older man. So, he's saying 'Is that correct?', 'That's not correct', or whatever. And she didn't want to say, 'cause he'd said the wrong thing, or she didn't want to say, 'No, that's not what happened'. – Caregiver

One caregiver talked about how it was distressing for another family member who was the young person's support person to witness the way that the young person was questioned during cross-examination.

He had to sit there and listen to his [Young Witness] explain what happened to her, watch her get badgered from [Defence Lawyer]. . . . But I mean he still talks about it now, about having to sit in with her and just, it's one of the most traumatic things he's ever had to do. – Caregiver

Some caregivers and young people spoke about it being the 'job' of the defence lawyer

to be aggressive in their questioning style. However, this was a difficult concept for younger witnesses to comprehend, and for adolescents this understanding did not mitigate the distress associated with being cross-examined.

But I couldn't explain to her that that was his job, to ask her questions like that, because she wouldn't have understood it. . . . Yeah I mean, you know, 'It's his job to pick on you', how do you tell that to a kid? – Caregiver

Intervention by judges or communication assistants in lawyers' questioning was appreciated when it occurred.

Yeah, [Communication Assistant] definitely interjected twice, which I think was really useful. Because if she hadn't been there, I wasn't allowed to say anything, yet I was sitting there when [Defence Lawyer] asked this question. . . . And I thought if I can't as an adult understand what he's asking, how the hell does a six-year-old understand it? – Caregiver

However, intervention was sometimes perceived as insufficient:

At what point does the judge step in? At what point is not okay to have these questions asked? . . . There should be some law somewhere in there which is when the lawyer is trying, and you can tell, everyone in the court can frickin' see it, when he's twisting it and it is so much easier to twist things with a child. . . . It's so much harder to not fall into the answer that they want to hear. – Caregiver

When asked about aspects of the court process that they would like to change, the manner in which children are cross-examined was a priority for all participants. Confusing, and aggressive, credibility-challenging cross-examination practices were cited as detrimental to the psychological safety of young people as well as the quality of evidence that they can provide.

When it was time for her to go into court and give her side of the story and stuff I feel like, you know, she needed to be treated like a kid. – Caregiver

'Cause I think that a fantastic outcome would be kids feel safe, secure, they can speak their minds, and the truth. And the biggest thing is not to be intimidated by lawyers, 'cause you'll get so much more out of them. – Caregiver

Because I'm scared, just from what our kids said I'm scared that kids will just clam up, and then you don't have a case and he gets to walk, you know. – Caregiver

For one family, the manner in which the young witness was cross-examined, and the distress that this caused for the witness and her caregivers alike, was a major factor in their decision not to participate in a proposed retrial.

What was the point, why did we bother, if someone can talk to her like that? Which is why we didn't go for the retrial . . . we're not putting her through that again, there is just no way. – Caregiver

Feeling comfortable and supported when at court is important

Feeling comfortable and supported when at court was identified by participants as integral to the witness coping through the trial. Key aspects included warmth from those who were guiding them at court and safe and comfortable spaces to be in when at court. However, these elements of support were not consistently provided, and when they were absent this was experienced very negatively by participants.

Court was described as an inherently intimidating environment.

But they had this concept that that's where the baddies go, the baddies go to court and go in the clinker. And so for them to go

in, you know, they were seeing all this stuff, they said it was really, they didn't use the word intimidating but they were intimidated. Scary they said. – Caregiver

When victim advisors were experienced as warm and comforting, this was a critical source of support for families and played a key role in fostering a sense of comfort and safety at court.

[Victim advisor] was fantastic. And I think it all comes back to that, the staff you've got. She's just amazing, but she knows exactly what's happening, she understands the system, and she made a big difference. Having her there was, you know, it's a buffer. It just makes it far more gentle. – Caregiver

Participants identified the qualities of victim advisors that made them an integral support as *'the love'*, having the best interest of the young witness at heart and connecting well with the witnesses. One victim advisor was described as *'a box of diamonds'*. However, this was not a consistent experience, and some families perceived victim advisors as preoccupied or inattentive.

Victim advisors were not the only source of emotional support at court. For one family where there had been a communication assistant involved in the trial, their ability to connect with a child was hugely appreciated. For another family a support person provided by an external agency provided long-term support in the lead-up to and post-trial, and attended court with the family. This support was described as invaluable.

The AVL room was, for young people, the main space where they spent time at court. Factors that contributed to this space being safe and comfortable for young witnesses were having toys and activities available, having support people who they felt comfortable with in the room with them, and the availability of food and drink and appropriate activities.

I guess just being in the room with [Victim advisor], yeah, 'cause it was like

nice and colourful, colourful couches. Just made me feel at home basically. – Young person

When asked what the most important things in the AVL room are, one young witness replied: *'The toys and the cookies and Milo'*.

However, young people thought that there was room for improvement – one Auckland AVL room was described as *'boring'* and as needing to be *'a bit more colourful'* by one young person. Another young person spoke about how *'the temperature would all of a sudden drop and then rise'*.

The provision of food was an important part of making court a positive experience for some young witnesses. Children appreciated biscuits and Milo, and frequently cited these as the only good things about going to court. However, for one family, a limited supply of food and a lack of personal resources to get this made days at court challenging.

And, like, it was two days in a row. And on the first day, we bring heaps of food and then they cancelled it and we ate all that food in that area, 'cause there was, like, I think there was about four people. And we ate all our food and, like, we had no more food and money left. And on the second day, they didn't and we just left to like kind of starve. – Young person

Other factors that helped with comfort in the court environment included familiarisation through the Education for Court programme and meeting the judge and lawyer(s) prior to testifying. However, for one young person, meeting the defence lawyer prior to the trial created added distress and confusion as his demeanour was so different during this meeting to his demeanour during cross-examination.

She had just met this really nice lawyer who was kind and friendly to her and then turns into this a-hole of a guy. And that was confusing, because I remember her saying to me at the end of it 'He seemed

pretty nice'. . . . How confusing is that? . . . Why even let her meet that person who is there to do a job which is convince other people that everything you are saying is not true essentially, or that you wanted it or whatever. So that in itself I think is very confusing. – Caregiver

Safety and distance from the defendant when at court is important

Fears of seeing the defendant when at court was a major source of anxiety for young witnesses and caregivers alike. This included the knowledge that the defendant was in the court building, and that they were present in the courtroom when the young witness was giving evidence.

To be honest I didn't really feel that safe. I know there was people around me who were safe and stuff but I still felt like I might see him which was pretty scary. – Young person

When reassurance about protection from contact with the defendant was inadequate, stress was heightened. Some participants described a fear that they might 'bump into' the defendant at any time.

And one part there the Police Officer, we were in one room and we were escorting out the building, and she told me to stand somewhere and just stay there. And then she'd go out in the corridors, have a look if anyone was there, and then be like 'Come on, come on', like that sort of thing. Yeah, I was scared that maybe we might have bumped into him and how would I have reacted. – Young person

Caregivers were sometimes unable to avoid encounters with the defendant, such as when giving evidence or at sentencing. Those interviewed described this as significantly distressing and as adding another layer of anxiety to the court process for caregivers.

I don't want to use those words because I know I'm not the victim as such, but it's re-traumatising. It's taking you back to a

place that you don't really want to re-visit. – Caregiver

It really messed me up having to see [the defendant]. . . . There is this person who has done these things right there and it is very distracting, and it is raw emotion, and you're trying to give evidence and you're trying to listen to the lawyer but all you can think about is this fucking person right there. – Caregiver

This caregiver had given evidence in the trial and said that she was not offered a screen. They stated that had they been offered the option they would have chosen to have a screen.

Processes to strictly ensure that no contact with the defendant would occur were highlighted as essential. This provision would allow for young witnesses and their families to feel confident that they would be protected from encounters with the defendant.

Yeah, yeah, the process. There just needs to be, it needs to be tightened. Like, you know, you don't have a perpetrator coming down and the actual victims going through in the same space. You have to separate the two because it's just, it's a no go. – Caregiver

Several participants spoke about how young people would feel much safer if they did not have to enter the court room at all and were able to give their evidence via video link from another building entirely.

So with her giving evidence the way she did, I feel like she needed to be somewhere else, not in the same building. Because she was really scared of this man . . . knowing that she was in the same building as this man just really, yeah, freaked her out. – Caregiver

Separation of young witnesses from their caregivers during the court appearance is difficult

The ability of young witnesses to access their primary supportive caregiver during their time

at court was identified by some participants as very important.

What was helpful going to Mum was that, 'cause she's the best, so it made me feel better. – Young person

However, caregivers were often unable to be the support person for their child while their child was giving evidence because the caregiver was themselves to be a witness. This was distressing for caregivers and children alike.

When we found out that I was being called as a witness that just rocked our boat entirely because it meant that I couldn't be with her so I could no longer be that support person. And we were advised that [Witness's father] shouldn't either.... It was very difficult for us to come to terms with the fact that we could not be the people with her... that's your child. – Caregiver

You're taking the mother away from the child who's in court testifying to send her father to jail, and you're telling me to leave. You're taking away that support person for my child. – Caregiver

One caregiver expressed surprise at the expectation that her child would not be able to immediately see her after giving their evidence:

She's just been through a traumatic frickin' thing. And the first thing she wants to see is her mum. – Caregiver

There is a lack of information throughout the process

A lack of information about the court process heightened the stress and uncertainty associated with a system that is 'so foreign'. Young people and caregivers were often uncertain about trial procedures, and these uncertainties created significant anxiety.

Young people reported having almost no knowledge about court until just prior to the trial. In the absence of this knowledge young

people made incorrect assumptions, most notably that they would have to be in a room with, or speak with the defendant, which was a distressing thought. Some young people did not realise that they would not have to give evidence in the same room as the defendant until they attended court for the Education for Court programme just prior to trial. Consequently, they experienced a heightened level of stress and anxiety for many months prior to the trial.

I honestly thought that I would have to see [Defendant], I thought that that I would be in the same room as him and we would have to talk to each other about it. – Young person

The following excerpt from an interview with one young witness illustrates how challenging comprehending the meaning of 'going to court' can be for a child:

The first time when I was going to court I didn't know what court was.

What did you think it would be like?

Like something, like there's a court and you play on it.

Oh, like that kind of court, like a netball court or a tennis court?

Yeah, and that they would make you feel better.

And was it like that?

No.

Caregivers were the key source of information about the court process for young witnesses, but often lacked information themselves. This included information about court processes and procedures, but also how to access needed supports such as counselling. It appeared that there were limited contact people available to families to provide guidance in these areas.

Police were typically the main contact people for parents seeking information and were perceived as helpful in providing the information and answering questions that fell within their scope. However, police were not always

available, and often caregivers had such a limited understanding of the court process that they did not know what information would be important to ask about. Furthermore, seeking information and support required persistence at a time when emotional and practical resources were low.

I felt like I was doing a lot of the chasing people and trying to find the information. Who do we go to for support for this? How do we do this? How do we do that? Who is the person to talk to about this? ... And if that had just been a priority in the very beginning . . . within your first flippin week, when you have gone and reported something that is so damaging, that you have a team that goes 'We are coming to see you', 'We are coming to acknowledge that this had happened in your family, we've got information', especially in the beginning because that is the most vulnerable, honestly, because you've just found this out and you're trying to figure out what the hell do we do now. That is when you need the biggest amount of straight away support. Because we just felt we had no support.
– Caregiver

Parenting young witnesses through the court process is challenging

Caregivers are the primary source of support for young witnesses, and a critical one, through the entire court process.

Like for the first couple of months, maybe two or three months, I would constantly wake up. So she would be there with me making sure . . . she would be there with me making sure that nothing happens. – Young person

However, this was also a time of immense stress and emotional strain for caregivers. Caregivers spoke of being distraught upon hearing their child's accounts of the offending and their own emotional distress following the disclosure.

Like, have you seen people when they get bad news and then they just want to be physically ill? . . . It's actually a real thing that I felt like I was giving birth out my throat. It was that, and it just felt like the death of a child. And it still feels like the death of a child. – Caregiver

The court process, and particularly the time waiting until the trial, presented challenges to parenting, and the toll that this took on parents' own wellbeing during the trial process was evident in descriptions of their experience. Caregivers described the experience of parenting through the court process as '*terrible*', '*hard*', '*exhausting*' and '*damaging*'.

So it was in the period of about six months where I was a headless chicken, I didn't know whether I was coming or going. And having to pick up the pieces and put their lives back together for what he had done to them. – Caregiver

Some caregivers talked about the sense of isolation that comes with parenting in circumstances of sexual abuse disclosures and the investigation and prosecution that follows. Often caregivers assumed they were not able to share openly or seek support from their social network due to the sensitive nature of the offending, and for social or assumed legal reasons. One caregiver wished that she had access to other parents who had previously experienced going through the court process with their child.

The experiences of children and their caregivers are interconnected. However, despite caregivers' essential role and the multifaceted challenges and emotional strain that they face, most caregivers identified that there was little support for them within the broader court system. This included the period leading to the trial when family relationships were strained and when distress related to the investigation and the impending court trial was intense.

And you have to remember that families are victims too, you know. We go through the same. It's a hīkoi we do together.
– Caregiver

Total lack of support. It didn't need to be that hard. And I just hate the idea that some other families are about to go through what we have been through with that lack of support and with that lack of knowledge. – Caregiver

Caregivers also talked about the limited supports for them once at court.

Well I think the reality is, nobody is really serving the mother's needs in this situation because you're almost invisible. – Caregiver

When caregivers did feel well supported, this support was typically from extended family, workplaces or community contacts.

I'm very lucky, I have an amazing family, so I have great family support. And I've also got some really good friends, and my work are amazing. So I felt quite supported in that way. – Caregiver

The need for increased formal support was identified by all caregivers.

What do they [caregivers] need? Well they need their own psychologist, in my opinion. And I also think it would be so awesome if you could get assigned a navigator who can navigate you through Oranga Tamariki, Police and Court. They are so siloed and so disconnected, and their churn rate of staff is unreal. And I understand, I can understand why. But there was not a single person that could answer a question for the whole spectrum... You just need somebody to go, I don't know, to give you a bit of hope... just a person you can call.

[It was] my worst nightmare because of why we were there... parents need a support person like a proper support person, you know. – Caregiver

The caregiver who had access to a support person from an external agency through the duration of the trial process described this as invaluable in both practical and emotional terms. This caregiver said that this consistency

and availability of support should be provided for all families.

Yeah, she's always there for us, no matter what. And, yeah, it's really just having that support person... make sure that that support person is actually involved in the family and embracing them. And being there from day one till day none. Right through, not having one today, one tomorrow, who's on next week?

Discussion

The Sexual Violence Court Pilot represents a commitment to create meaningful change for victims and for the efficacy of Aotearoa New Zealand's justice system. In establishing the specialist courts, a stated intention was to 'improve the court experience by reducing delay and uncertainty for all those involved, especially child and vulnerable witnesses' (Chief District Court Judge Doogue, 2016). However, the experiences described by young people and caregivers who were interviewed in this research indicate that there is significant further room for improvement. Their experiences ranged from challenging to extremely distressing and retraumatising, indicating that participation in sexual violence trials continues to be negative in its impact on young witnesses. Concerns expressed by participants in the current study are remarkably similar to those raised by young witnesses and caregivers in research predating the pilot courts (Randell et al., 2018). The pilot sought to improve case management thus decreasing the delay to trial and set an expectation of judicial management of the examination of witnesses. However, from the reports of participants in the current study, pilot court procedures have not made significant progress to the extent that a positive impact on those young witnesses involved in the current research was felt.

The high level of distress reported by young witnesses and their caregivers has implications beyond concerns about individuals' wellbeing. If the reputation of court

involvement as a young witness is known to be highly distressing, disempowering and retraumatising, this may discourage victims from reporting sexual violence to police and/or agreeing to proceed as a complainant. Such a reputation appears justified, given the reports of participants in the current study. Several participants questioned whether their involvement with the court had been worth the stress that they had endured. One caregiver stated, *'There is so much within the justice system that we question having gone through this experience'*. One family withdrew from a proposed retrial as result of their experience.

Also of concern is the impact that heightened stress has on a young person's ability to provide best evidence and in turn the impact of this on trial outcomes. One caregiver summarised the cumulative impact of insufficient attention to the needs of young witnesses and their caregivers as counterproductive to the purposes of our justice system. In this case, there was a retrial and thus an additional delay of approximately another year during which the offender remained in the community. This caregiver emphasised the potential risk of this delay to child protection efforts when an offender (who in this case was found guilty upon retrial) remains in the community. She stated *'If you don't get it right the first time he gets to walk, and that what's happened. This guy sexually assaulted I hate to think how many people'*.

Some issues raised in the present and prior research were not specifically addressed by pilot court initiatives, and it is therefore not surprising that they remained a concern for these participants. These ongoing issues include the lack of information and support available to young witnesses and their caregivers during the period leading to the trial, inadequacies in the physical environment of the court, and issues concerning young people's access to caregivers when at court. The needs of vulnerable witnesses are broad and require a multi-agency response including police, child protection and other community services. A more comprehensive response to the needs of

young witnesses will require attention to the entire span of time from making a complaint to trial completion and, where relevant, sentencing. The specialist sexual violence courts provide an opportunity to test further innovations in the areas of additional supports for families pre-, during and post-trial.

Those matters that should be in the control of the courts include a reduction in the pre-trial delay. Although reducing this delay was one of the central aims of the pilot courts protocol, delays were experienced by these participants as still far too long and significantly distressing. Indications from a related study indicate that the aim of reducing delay may have not been realised and that the time between the witnesses' complaint being recorded by police and the trial was 13.2 months in pilot courts (Randell et al., 2020). If delay cannot be dealt with by case management strategies then the pre-recording of young witness's entire evidence (including cross-examination) should be made more available. Also strongly indicated is the need for improving examination and cross-examination practices through ongoing training for judges and counsel, and greater use of communication assistants. These innovations would not only act to reduce the distress associated with trial participation but would also improve the quality of evidence that young witnesses are able to provide.

As part of a broader approach, the provision of a single case manager or 'navigator' is indicated. Such a person would be available to support the family for the duration of the investigation, trial, post-trial period and sentencing and would meet many of the needs raised by families. This would ensure comprehensive information provision, support with referral to counselling and other required services. This navigator could act as a single point of contact for families and could provide liaison with other relevant parties such as police and court staff. They could also attend to the individual needs of a witness and their whānau/family when at court such as transport, safety and provision of food, ensuring

that these needs are met. Better provision of information and support at an early stage would strengthen the ability of caregivers to provide reassurance and accurate information to their child during the wait period and reduce the anxiety induced by uncertainty and lack of accurate knowledge.

These interviews revealed just how inextricable the experiences of young witnesses and their primary supportive caregivers are and that the support of caregivers is integral to the well-being of young complainants. From a psychological perspective this is entirely unsurprising – a young person is a part of an emotionally interconnected family system. However, our present criminal justice system tends to treat young witnesses as individuals, often including family members as potential witnesses but neglecting the importance of family members as providers of support. Consistent with our findings in the earlier study (Randell et al., 2018), caregivers in the current study faced challenges around their own emotional response, how to support and respond to their child, and how to access information and support. The stress that caregivers are under during the court process and the limited supports that families have available to them were evident in their descriptions of their experience. If the justice system is committed to reducing the negative impact of court involvement on young witnesses, it must better attend to the needs of family/whānau. Practical ways of achieving this would include providing comprehensive information in the early stages, and consistent and adequate support during a trial. If a ‘navigator’ role was established, such information provision would likely be inherent to this role.

Qualitative research is rarely a straightforward process in ethically complex and sensitive areas such as sexual violence. However, to create change that is meaningful, and a justice system that is not harmful to young people who have experienced sexual violence, it is essential to involve them in discussions regarding change. However, in this research and its predecessor (Randell et al., 2018) there

were significant difficulties in recruiting young people and caregivers to take part in the research. Other research involving interviews with young witnesses has experienced similar difficulties (Eastwood & Patton, 2002; Hayes et al., 2011; Plotnikoff & Woolfson, 2009). Reasons for difficulties in recruitment of participants in the current study included low numbers of cases involving young complainants in the pilot courts during the recruitment period, and reliance on indirect recruitment via victim advisors for whom this was an added responsibility in an already demanding role. Also it appeared that victim advisors were reluctant to approach some young people who they regarded as particularly vulnerable at the time of meeting with them. It is therefore possible that those who had the most difficult time participating in the judicial process were not represented here. Additionally due to the indirect recruitment methods, it was not possible to ascertain the precise number of trials that took place during the recruitment period, or the number of potential participants who declined participation. The proportion of complainants or trials that the sample in the current research represents is therefore unknown.

Despite the aforementioned limitations regarding the representativeness of the sample, participants in the current study varied in terms of age, family circumstances, ethnicity, socioeconomic background, relationship to the defendant, nature of the allegations and trial outcome. The sample was diverse, yet clear and useful themes were evident in the data. Given the diversity of these families, it would be useful for future research to seek to further understand the many factors that impact on the experiences and needs of young witnesses and their caregivers.

As expressed by the former Chief District Court Judge in her establishment of the Sexual Violence Courts Pilot, the pilot provides an opportunity to test the efficacy of the guidelines in reducing the negative impact on witnesses, and indicate whether other measures are needed to achieve this (Chief District

Court Judge Doogue, 2016). It appears that, at least where young witnesses are concerned, the specialist sexual violence courts have not yet significantly reduced the negative impact on witnesses, and there is need for alternative and/or additional solutions. The recommendations discussed above are not new or novel. They have been outlined in detail in previous reports (e.g. McGregor, 2017; New Zealand Law Commission, 2015). The establishment of the pilot, with its stated intention to reduce the harm for complainants, is a decisive and meaningful step for a justice system that (with some exceptions) has inadequately responded to repeated calls for reform to protect vulnerable witnesses. Although the findings of this research suggest that more change is needed, the specialist sexual violence courts provide fertile ground within which to sow the seeds of meaningful change.

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Ethical standards

Declaration of conflicts of interest

Isabel Randell has declared no conflicts of interest

Fred Seymour has declared no conflicts of interest

Clare McCann has declared no conflicts of interest

Suzanne Blackwell has declared no conflicts of interest.

Ethical approval

All procedures performed in studies involving human participants were in accordance with the ethical standards of the University of Auckland Human Participants Ethics Committee and with the 1964 Helsinki declaration and its later amendments or comparable ethical standards.

Informed consent

Informed consent was obtained from all individual participants included in the study.

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